

DIVISION I

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, Judge

CA06-18

June 14, 2006

HERMANN COMPANIES
APPELLANT

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F410388]

V.

PATSY INGRAM

APPELLEE

AFFIRMED

Appellant, Hermann Companies, appeals from the Arkansas Workers' Compensation Commission's decision awarding benefits to appellee, Patsy Ingram. Appellant contends that because appellee's claim for benefits in 2004 was based on a 1996 injury, the claim is barred by the statute of limitations. We affirm, holding that because appellee's claim for benefits was based on a 2004 injury, it is not barred.

Appellee testified that in 1989 she began working at Anchor Packaging, where she packaged rolls of plastic wrap. In 1995 or 1996, she suffered from minor numbness, tingling, and pain in her arms. Appellee testified that she did not file a claim for workers' compensation, and even though she spoke to appellant's safety manager, they did not send her to a doctor, telling her that they would "turn it in to workman's comp" if she had to have

surgery. She went to her family doctor, who referred her to a neurologist, whom she saw on two occasions. The neurosurgeon performed an EMG/NCV study that showed “bilateral (right more than left) sensory-motor and mostly demyelinating moderate median neuropathy at the wrists.” According to appellee, the neurologist did not recommend surgery. She continued working in the same position for a few months, after which she was transferred to a machine operator position, which required less intensive use of her hands. Appellee stated that the pain, numbness, and tingling went away, and from 1996 to 2003, she did not have any problems with her hands, nor did she seek medical treatment for her hands.

In November 2003, appellee returned to packaging plastic wrap. In May 2004, appellee began suffering, numbness, tingling, and pain in her hands and arms that continued to worsen. She reported these difficulties to her supervisor, and a notice of injury was signed by appellee on July 16, 2004. A physician diagnosed appellee as having bilateral carpal tunnel syndrome, and an EMG/NCV study showed that appellee had “bilateral median nerve compromise at the wrist in the carpal tunnel[;] right is severe[;] left is moderate-severe[.]” An orthopedic surgeon recommended surgical decompression on both wrists. Surgery was performed on appellee’s right wrist, and the post-operative diagnosis was “severe right carpal tunnel syndrome with flexor tenosynovitis.” Appellee further testified that she was still having problems with her left hand, which was worse than it was in July 2004.

Appellant controverted appellee’s claim for benefits. The administrative law judge

(ALJ) found that appellee's claim was not barred by the statute of limitations, as appellee sustained either a new injury or aggravation of her pre-existing condition. Consequently, the ALJ awarded appellee temporary total disability and reasonable hospital and medical expenses. The Commission adopted the ALJ's decision.

Appellant contends on appeal that because appellee's claim was based on a 1996 injury, the claim is barred by the statute of limitations. Appellant asserts that appellee's carpal tunnel syndrome never abated and only worsened, noting that one medical record from 2004 stated that appellee was told in 1993 that she had carpal tunnel syndrome, that she "has had problems off and on for a while," and that "[o]ver the past few months she has gotten worse." Further, appellant notes that appellee's July 2004 notice of injury states that her wrist and hand pain was an "ongoing problem for several years on and off and has been reported and I have seen the old company doctor ... before about this problem."

In reviewing the Commission's decision, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm if those findings are supported by substantial evidence. *Pina v. Wal-Mart Stores, Inc.*, ___ Ark. App. ___, ___ S.W.3d ___ (May 11, 2005). Further, the Commission is not required to believe the testimony of any witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief, and once the Commission has made its decision on issues of credibility, we are bound by that decision. *Id.*

We observe that a claim for compensation for disability on account of an injury is barred unless filed with the Commission within two years from the date of the compensable injury. Ark. Code Ann. § 11-9-702(a)(1) (Repl. 2002). In *Pina*, we held that for carpal-tunnel syndrome, the statute of limitations begins to run when the injury becomes apparent to the claimant. Thus, in *Pina*, a claimant's claim for benefits was barred by the statute of limitations where the claimant filed a claim in April 2002 but her symptoms became apparent in October 1999 and never resolved. An aggravation, however, is a new injury resulting from an independent incident. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). If the second period of disability is the result of a second incident that contributes independently to the injury, the injury is a new one for which the employer becomes liable, and the statute of limitations begins to run anew. See *McDonald Equip. Co. v. Turner*, 26 Ark. App. 264, 766 S.W.2d 936 (1989).

The Commission found that appellee suffered either a new injury or an aggravation of her pre-existing condition while carrying out her packaging duties between November 2003 and July 2004 and accordingly concluded that she timely made a claim for benefits relating to her July 2004 report of an injury. In so finding, the Commission credited appellee's testimony that her symptoms abated from 1996 until 2003 and then developed and progressively worsened after she returned to her packaging duties in November 2003, requiring medical treatment in July 2004. We further note that in 1996, tests showed that she had moderate median neuropathy at the wrists and that surgery was not recommended,

but tests showed in 2004 that the right wrist was severe and the left was moderate-severe and that surgery was recommended. Given the Commission's credibility determination, and given that appellee was asymptomatic for approximately seven years, and after returning to her packaging duties, developed a condition necessitating surgery, we accordingly conclude that substantial evidence supported the Commission's decision that appellee suffered from an aggravation or new injury that was not barred by the statute of limitations.

Affirmed.

PITTMAN, C.J., and GRIFFEN, J., agree.